

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

BLUE SCHOOL
Employer

and

Case 02-RC-278139

LOCAL 2110, TECHNICAL, OFFICE &
PROFESSIONAL UNION, UAW, AFL-CIO
Petitioner

ORDER

The Employer's Request for Review of the Regional Director's Decision and Direction of Election is denied as it raises no substantial issues warranting review.¹

¹ In denying review, we observe that the standard articulated in *PCC Structural, Inc.*, 365 NLRB No. 160 (2017), does not apply in cases where, as here, no party asserts that the smallest appropriate unit must include employees excluded from the petitioned-for unit. See *AT&T Mobility Services, LLC*, 371 NLRB No. 14, slip op. at 1 (2021). Rather, in cases where the petitioner seeks a presumptively appropriate unit—such as the wall-to-wall unit at issue here—“the burden is on the Employer to demonstrate that the interests of a given classification are so disparate from those of other employees that they cannot be represented in the same unit.” See *Airco, Inc.*, 273 NLRB 348, 349 (1984); *International Bedding Co.*, 356 NLRB 1336, 1137 (2011). Accordingly, we agree with the Regional Director that the School Nurse classification may be appropriately included in the petitioned-for wall-to-wall unit, as the Employer has failed to demonstrate that her interests are so disparate from other employees that she cannot be represented in the same unit.

Furthermore, we find that the Regional Director did not abuse his discretion in ordering an immediate election under the circumstances (as opposed to postponing the election until October), as there was a substantial and representative complement of employees, and the election was conducted by a mail-ballot election. See *Saltwater, Inc.*, 324 NLRB 343, 344 (1997) (concluding that the RD's decision to hold an immediate election was “a reasonable method of balancing the goals of holding a prompt election while also enfranchising the greatest number of eligible employees”). In addition, we find the Regional Director did not abuse his discretion in directing a mail-ballot election. See *Aspirus Keweenaw*, 370 NLRB No. 45 (November 9, 2020).

Chairman McFerran joins her colleagues in denying review of the Regional Director's Decision and Direction of Election. Further, in denying review, the Chairman believes that the Regional Director did not abuse his discretion by ordering a mail-ballot election, for the reasons given in her separate opinion in *Aspirus Keweenaw*, 370 NLRB No. 45, slip op. 13-15 (2020). She agrees, however, that even under the majority opinion in *Aspirus*, the Regional Director's decision should be affirmed.

LAUREN McFERRAN,

CHAIRMAN

MARVIN E. KAPLAN,

MEMBER

JOHN F. RING,

MEMBER

Dated, Washington, D.C., October 19, 2021.